

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MATTHEW CHRISTOPHER GOLLAKNER,
a/k/a CHRISTOPHER MATTHEW GOLLAKNER,

Defendant-Appellant.

UNPUBLISHED

April 2, 1999

No. 206261

Jackson Circuit Court

LC No. 94-068838 FH

Before: McDonald, P.J., and Hood and Doctoroff, JJ.

MEMORANDUM.

Defendant appeals by right from his sentence of two to four years' imprisonment for unauthorized possession of a financial transaction device, MCL 750.157p; MSA 28.354(15), after pleading guilty to violating his original sentence of probation. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On appeal, defendant argues that his sentence is disproportionate under *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990), noting that the guidelines sentence range for the underlying offense was zero to six months. We disagree. The sentencing guidelines do not apply to probation violation sentences and this Court may not use the guidelines in any manner in determining whether defendant's sentence is proportionate. *People v Williams*, 223 Mich App 409, 413; 566 NW2d 649 (1997). Compare *People v Gatewood*, 450 Mich 1025; 546 NW2d 252 (1996). Moreover, when sentencing defendant as a probation violator, it was appropriate for the sentencing court to consider not only the seriousness of the underlying offense, but also the seriousness of the facts and circumstances surrounding defendant's violation of probation, i.e., defendant's commission of new financial transaction device and criminal sexual conduct felonies while on probation. *Williams*, 223 Mich App at 411.

We reject defendant's contention that the sentencing court failed to give due consideration to his remorse and other relevant circumstances raised at sentencing, such as defendant's need for substance abuse treatment, simply because the court made no express reference to such factors. See *People v Girardin*, 165 Mich App 264, 267-268; 418 NW2d 453 (1987). Compare *Fletcher v Fletcher*,

447 Mich 871, 883-884; 526 NW2d 889 (1994). In light of defendant's subsequent offender status, the seriousness of his subsequent criminal conduct and the fact that the sentencing guidelines do not apply to probation violators, we conclude that defendant's sentence is proportionate to the offender and the offense. *Williams, supra*.

Affirmed.

/s/ Gary R. McDonald

/s/ Harold Hood

/s/ Martin M. Doctoroff